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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,507	03/08/2002	Peter J. Brickfield	07500001AA	3726
	7590	11/03/2004	EXAMINER	
McGuire Woods LLP Suite 1800 1750 Tysons Blvd. McLean, VA 22102			JARRETT, RYAN A	
			ART UNIT	PAPER NUMBER
			2125	
DATE MAILED: 11/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,507

Applicant(s)

BRICKFIELD ET AL.

Examiner

Ryan A. Jarrett

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-37 and 94-99 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-37 and 94-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 94-99 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claims raises a question as to whether the claims are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claims 94-96, 98, and 99 are directed to abstract ideas since they do not require computer implementation or use of technology to accomplish and since they do not necessarily produce repeatable, concrete results, since subjective human decision could be involved.

Claim 97 depends from claim 96 and incorporates the same deficiency.

Additionally, regarding claims 94 and 95, the claimed invention is directed to non-functional descriptive material.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 32, 96 and 97 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 32 recites the limitation "said automatic intervention" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 96 recites the limitation "the device" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 97 depends from claim 96 and therefore incorporates the same deficiency.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 16-37 and 94-99 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al. U.S. Patent No. 6,785,592. Smith et al. discloses

16. (original) A method for minimizing and/or eliminating need for human operator attention in energy management of a building system, comprising: non-human, computerized

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processing of obtained energy data, wherein the obtained energy data is for at least one energy user in the building system, said processing including (A) automatic determination of whether at least one energy-relevant event is present or (B) continual optimization of a setting of the at least one energy user (e.g., col. 2 lines 10-47, col. 6 lines 42-52, col. 7 lines 18-30, col. 8 lines 58-65, col. 13 lines 7-19, col. 14 lines 15-22).

17. (original) The method of claim 16, wherein the energy-relevant event is a threat of a new maximum peak (e.g., col. 15 lines 42-51, col. 18 lines 34-46, col. 19 lines 49-65, col. 22 lines 8-15, col. 22 lines 64-67, col. 23 lines 22-28, col. 24 lines 48-54).

18. (original) The method of claim 17, wherein the peak is selected from the group consisting of a kW demand peak, a lighting peak a carbon dioxide peak and a pollutant peak (e.g., col. 15 lines 42-51, col. 18 lines 34-46, col. 19 lines 49-65, col. 22 lines 8-15, col. 22 lines 64-67, col. 23 lines 22-28, col. 24 lines 48-54).

19. (original) The method of claim 16, including, when a energy-relevant event is automatically determined to be present, immediately activating an automatic response to the energy-relevant event (e.g., col. 2 lines 10-47, col. 6 lines 42-52, col. 7 lines 18-30, col. 8 lines 58-65, col. 13 lines 7-19, col. 14 lines 15-22).

20. (original) The method of claim 19, wherein the automatic response is non-determinative (e.g., col. 15 line 24 – col. 16 line 9).

21. (original) The method of claim 17, wherein at least one intelligent agent, from the obtained energy data, actually forecasts the peak (e.g., col. 15 line 24 – col. 16 line 9).

22. (original) The method of claim 19, wherein the energy-relevant event is a threat of a new maximum peak, and the immediately activated automatic response includes energy reduction interventions to avoid the new maximum peak (e.g., col. 15 line 24 – col. 16 line 9, col.

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18 lines 34-46, col. 19 lines 49-65, col. 22 lines 8-15, col. 22 lines 64-67, col. 23 lines 22-28, col. 24 lines 48-54).

23. (original) The method of claim 16, wherein the automatic determination of whether at least one energy-relevant event is present comprises application of artificial intelligence (e.g., col. 15 line 24 – col. 16 line 9).

24. (original) The method of claim 23, wherein the artificial intelligence is selected from the group consisting of neural networks; rule-based expert systems; and goal-based planning systems (e.g., col. 15 line 24 – col. 16 line 9).

25. (original) The method of claim 16, wherein more obtained energy data is processed in a given time period than could be processed by a human being (e.g., col. 15 line 24 – col. 16 line 9).

26. (original) The method of claim 16, wherein the building system comprises at least two buildings (e.g., col. 9 lines 25-34).

27. (original) The method of claim 16, including machine-based learning from the obtained data and/or machine-based constructing a model from the obtained data (e.g., col. 15 line 24 – col. 16 line 9).

28. (original) The method of claim 16, wherein the building system includes a building or buildings selected from the group consisting of at least one university building; at least one hotel building; at least one hospital building; at least one car dealership building; at least one shopping mall; at least one government building, at least one chemical processing plant; at least one manufacturing facility; and any combination thereof of buildings (e.g., col. 10 lines 13-25).

29. (original) The method of claim 16, wherein at two least buildings are under management and are geographically dispersed (e.g., col. 9 lines 25-34).

30. (original) The method of claim 16, wherein a human operator is not needed (e.g., col. 2 lines 10-47, col. 6 lines 42-52, col. 7 lines 18-30, col. 8 lines 58-65, col. 13 lines 7-19, col. 14 lines 15-22).

31. (original) The method of claim 16, wherein the building system includes at least two buildings and the at least two buildings are commonly owned or not commonly owned (e.g., col. 9 lines 25-34).

32. (original) The method of claim 16, including automatic documentation of energy savings attributable to any said automatic interventions (e.g., col. 18 line 64 – col. 19 line 9).

33. (original) The method of claim 16, including machine-based reasoning to select between at least two conflicting goals (e.g., col. 12 lines 60-67).

34. (original) The method of claim 33, wherein the machine-based reasoning is to select between a market price goal and a comfort-maintenance goal (e.g., col. 12 lines 60-67).

35. (original) The method of claim 16, including a computerized display of energy data and/or device (e.g., col. 11 lines 22-29).

36. (original) The method of claim 16, including, on human demand, computerized forecasting, computerized simulation of an effect or effects of a proposed control action; and/or computerized reporting on simulation at various levels of aggregation (e.g., col. 8 lines 24-34, col. 15 lines 52-62).

37. (original) The method of claim 36, wherein the aggregation level for the computerized reporting is at an individual device, at everything in a building, at a set of buildings, or everything commonly owned (e.g., col. 13 line 61 – col. 14 line 6).

7. To expedite a complete examination of the instant application the claims rejected under 35 U.S.C. 101 above are further rejected as set forth below in anticipation of

applicant amending these claims to place them with the four statutory categories of invention. Smith et al. discloses:

94. (original) A compilation of energy-relevant data, comprising: a stream of energy-related data for at least one individual energy user within a plurality of energy users (e.g., col. 7 lines 19-30, col. 8 lines 58-65, col. 9 lines 1-10, col. 12 lines 1-8, col. 13 line 50 – col. 14 line 6).

95. (original) The compilation of claim 94, wherein the at least one individual energy user is within a multi-building system wherein separate streams of data are provided for other individual energy users within the multi-building system (e.g., col. 7 lines 19-30, col. 8 lines 58-65, col. 9 lines 1-10, col. 12 lines 1-8, col. 13 line 50 – col. 14 line 6).

96. (original) A data analysis method, comprising leveraging a streams of energy-related data for at least one individual energy user within a plurality of energy users, wherein the leveraging includes a comparison against historic data for the device (e.g., col. 7 lines 19-30, col. 8 lines 58-65, col. 9 lines 1-10, col. 12 lines 1-8, col. 13 line 50 – col. 14 line 6).

97. (original) The data analysis method of claim 96, wherein the leveraging includes computer- based searching for rapid deviation from a historic pattern (e.g., col. 7 lines 19-30, col. 8 lines 58-65, col. 9 lines 1-10, col. 12 lines 1-8, col. 13 line 50 – col. 14 line 6).

98. (original) A method of determining whether to repair or replace an individual energy user, comprising: reviewing a stream of energy-related data for the individual energy user, wherein the individual energy user is contained within a plurality of energy users (e.g., col. 7 lines 19-30, col. 8 lines 58-65, col. 9 lines 1-10, col. 12 lines 1-8, col. 13 line 50 – col. 14 line 6).

99. (original) The method of claim 98, wherein the plurality of energy users are contained within a multi-building system (e.g., col. 7 lines 19-30, col. 8 lines 58-65, col. 9 lines 1-10, col. 12 lines 1-8, col. 13 line 50 – col. 14 line 6).

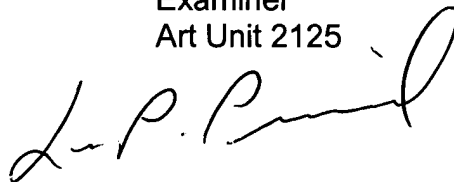
Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan A. Jarrett whose telephone number is (571) 272-3742. The examiner can normally be reached on 10:00-6:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ryan A. Jarrett
Examiner
Art Unit 2125



10/26/04

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